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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/962,032	10/31/1997	DANIEL L. CHAPMAN		8376

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DANIEL L CHAPMAN
PO BOX 710316
SANTEE, CA 920720316

EXAMINER

RICHARDSON, JOHN A

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

KB

Office Action Summary	Application No. 08/962,032	Applicant(s) CHAPMAN, DANIEL L.	
	Examiner John Richardson	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 161-172 and 181-188 is/are pending in the application.
- 4a) Of the above claim(s) 181-188 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 161-172 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Non Final Rejection

1). The applicant's letter dated May 18 2004 canceling claims 1-160, 173-180, and adding new claims 181-188 in pursuant to the request for continued examination (RCE) dated March 16 2004, is acknowledged.

2). Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 161-172, drawn to combination apparatus, classified in class 42, subclass 66.
- II. Claims 181-188, drawn to subcombination apparatus, classified in class 42, subclass 70.04.

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the apparatus can operate without the incorporation of a camming stud and cam track. The subcombination has separate

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utility such as providing an indication means of the status of the position of the blocking piece.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

3). Claims 181-188 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

4). The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5). Claims 161 to 172 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruger et al (U.S. 4,590,697).

The reference sets forth a passive locking mechanism capable of meeting the applicant's claimed inventive concept. In particular, Figure 15 of Ruger et al sets forth a firearm having a sear (item 39), a trigger (item 16), a trigger-bar (item 38) capable of rotation relative to said trigger, and a longitudinal slidable firing element (item 33); a passive safety mechanism comprising, a blocking piece (item 43) to block said firing element (item 33), and a linkage (cam items 57/58), distinct from the said trigger bar (item 38), which in turn connects with said trigger (item 16) and said blocking piece (item 43), and the apparatus is characterized in that the removal of said linkage (cam items 57/58) will disconnect said trigger-bar from said trigger.

In addition, clauses such as, "adapted to", "capable of", "configured to", etc are essentially method limitations or statements of intended or desired use. Thus, these claims as well as statements of intended use do not serve to patently distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641, *In re Yanush*, 177 USPQ 705, *In re Finsterwalder*, 168 USPQ 530, *In re Casey*, 512 USPQ 235, *In re Otto*, 136 USPQ 458, and *Ex parte Masham*, 2 USPQ 2nd 1647.

It is also noted that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from prior art apparatus" if the prior art teaches all the structural limitations of the claim. *In re Masham*, 2 USPQ2d 1647.

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Relating to claim 162, the reference discloses the said linkage items 57/58 are pivotable / slidable / rotatable (Column 3, lines 22-29), relating to claims 163-165, 168-169, the reference discloses an engagable link leg (item 46) with a support piece (item 47) and an axle (item 48) that reads on the applicant's claims, relating to claim 167, the reference discloses the said trigger item 16, slidable along bar item 38 in the direction of the arrow shown in Figure 15, relating to claim 170, the reference discloses a pivotable sear (item 39) with a sear notch item 53 and latch projection item 50 acting on the said trigger-bar (item 38) through blocking stud piece item 48, and relating to claims 171-172, the reference discloses an engagable leg (item 46) acting as a stop and operating in conjunction with torsion springs (items 87, 88) supported on a mandrel (item 56). Claims directed to apparatus must be distinguished from prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device *is*, not what a device *does*. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP§ 2115, a recitation in a claim to the material or article worked upon, does not serve to limit an apparatus claim.

In addition, the examiner notes that the term **distinct** does not imply **separate**, and the term connected does not mean that additional features cannot be present between any two structures. Therefore, the linkage of the reference (items 57/58), being distinct from the trigger-bar (item 38), are not part of the trigger (item 16), or part of the trigger-bar (item 38) and it is separate as set forth in Column 3, lines 21+, and furthermore connects to the trigger (item 16) and the blocking piece (item 43) via trigger-bar (item

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38). In this manner the removal of the linkage (items 57/58) disconnects the trigger-bar (item 38) from the trigger (item 16).

Connected to one another includes being joined together, but is broader than just that, as two items can be **connected** to each other by way of their common connection to some other item, See Kreis AG v. American Hospital Supply Corp. (DC N111), 192 USPQ 585.


6). Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Richardson whose telephone number is (703) 305 0764. The examiner can normally be reached on Monday to Thursday from 7.00 AM to 4.30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306 4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 305 7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1113.

John Richardson, PE,

September 09 2004.


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER